

DISTRICT OF COLUMBIA RENTAL HOUSING COMMISSION

RH-SF-09-20,098

In re: 2480 16th Street, NW

Ward One (1)

DORCHESTER HOUSE, ASSOCIATES, L.L.C.
Housing Provider/Appellant

v.

TENANTS OF 2480 16TH STREET, NW
Tenants/Appellees

**ORDER ON MOTION TO INTERVENE
BY BENOIT BROOKENS**

December 11, 2013

BERKLEY, COMMISSIONER. On November 15, 2013, Benoit Brookens¹ filed with the Commission a “Motion to Intervene, Class Representative in T/P 3788 Benoit Brookens v. Hagner Management Corp. and Class Counsel in T/P 11,552 Benoit Brookens et al. Bernard Gewirz, et al.” (Motion to Intervene) in the appeal of the Final Order from the Office of Administrative Hearings (OAH) in Dorchester House Associates, LLC v. Tenants of 2480 16th St., NW, RH-SF-09-20,098 (OAH May 23, 2011). See pp. 3-4 *infra*.² The Dorchester House Associates, LLC filed a cross-appeal. In his motion, Mr. Brookens claimed as follows in relevant part:

¹ The movant, Benoit Brookens, refers to himself as “the class representative and a beneficiary member of the protected class, subject to rent ceiling protection and enforcement by this Commission;” however, in Brookens v. Committee on Unauthorized Practice of Law, 538 A.2d 1120, 1122 (D.C. App. 1988), the District of Columbia Court of Appeals (DCCA) found that Mr. Brookens who is not a member of the Bar of the DCCA, is prohibited from engaging in the unauthorized practice of law in the District of Columbia. See *infra* at pp. 7-8.

² The Motion to Intervene was filed five (5) days before the Commission hearing on the appeal on November 20, 2013. The Housing Provider opposed the Motion to Intervene at the Commission hearing. The Commission denied the Motion to Intervene as a preliminary matter at its hearing. This Order memorializes the Commission’s reasoning underlying its denial of the Motion to Intervene at its November 20, 2013 hearing.

[T]he need to intervene is based upon the interests of all affected Tenants, by the Order of the D.C. Rent Administrator in T/P 3788, T/P 11,552 (consolidated with T/P 12,085) are affected by common defenses raised by the landlord in its failure to comply with rent ceiling and rent reductions and common allegation, e.i. [sic] unauthorized practice of law raised against the Tenants Representative in T/P 3788, T/P 11,552 (consolidated with T/P 12,085) and Tenants of Dorchester House Apartments v. Dorchester House Associates C/I 20,767 and C/I 20,768 (Housing Provider Appellant/Cross-Appellant's Memorandum in Lieu of Brief in Response to Notice of Appeal Filed by Rudolph Douglas) and now against the Tenants Representative and Tenants Counsel in the above caption action, RH-SF-20098, p. 2.

Motion to Intervene at 1. In the Motion to Intervene, Mr. Brookens requests the following relief:

[T]o provide for judicial economy and avoid inconsistent rulings to the Came [sic] parties –in essentially the same type of proceedings over the applicability of the T/P 3788 Brookens v. Hagner Management Corporation rent ceiling to current and former Dorchester House Apartment Tenants, and the extent of the rent ceiling coverage to the class of affected tenants in T/P 11,552 Brookens et. al. Bernard Gewirz, et. al. Benoit Brookens is requested to intervene in these proceedings as the class representative and a beneficiary member of the protected class, subject to rent ceiling protection and enforcement by this Commission.

Motion to Intervene at 5.

I. PROCEDURAL HISTORY

On February 6, 2009, Dorchester House Associates, LLC (Housing Provider/Appellant/Cross-Appellee) filed Services and Facilities Petition (SF) 20,098, with the Rent Administrator seeking a change in services in the Dorchester House apartment building located at 2480 16th Street, N.W. (Housing Accommodation), which would affect all tenants.³

On May 26, 2009, a status conference was held by Administrative Law Judge Erika L. Pierson

³ The change in related services and facilities in the Dorchester House involved a major renovation to all apartments and common areas in the building. It involved a renovation of the building's electrical system and the heating, cooling and ventilation (mechanical) systems. R. at 59. Therefore, all of the tenants in the building were parties to this Services and Facilities Petition.

(ALJ). An evidentiary hearing was held on the following dates: September 14 and 15, 2009; November 4, 5 and 17, 2009; March 16 and 17, 2010; April 27 and 28, 2010; and May 3, 2010. The Housing Provider was represented by Richard Luchs, Esquire. The following witnesses testified on behalf of the Housing Provider: Terry Busby, Construction Manager; John Hoskinson, Property Owner; Scott Kaufman, Engineer; Ernest Marcus, Appraiser; Aubrey Grant, Architect; John Barkanic, Certified Public Accountant; and Darlene Thomas, Property Manager.

The Dorchester Tenants Association (DTA or Dorchester Tenants) was represented by B. Marian Chou, Esquire.⁴ Three tenants represented themselves: Campbell Johnson III (Unit 234); Larry Hunter (Unit 227); and Mark Edwards (Unit 210). The following tenants testified: Richard Mancini (Unit 214); Bonnie Branner (Unit 821); David Castleberry (Unit 127); Mark Fisher (Unit 407); Vernell Grissom (Unit 926); Ann Cook (Unit 442); Lorenzo Calendar II (Unit 246); and Rudolph Douglas (Unit 514). The following non-tenant witnesses testified on behalf of Tenants: Harold Ward, Electrician, and Dr. David V. Stallard, Electrical Engineer.

On May 23, 2011, the ALJ, issued her Final Order.⁵ Record (R.) at 830. On June 1, 2011, B. Marian Chou, Esquire, filed the Dorchester Tenants' motion for reconsideration of the Final Order. R. at 854. On June 3, 2011, the OAH notified Rudolph Douglas that his filing was rejected because he had failed to attach a certificate of service to the other parties in the case. R.

⁴ In an order dated July 14, 2009, the ALJ directed counsel for the Tenant Association to submit a list of the individual tenants she represents, sorted by apartment number, no later than July 31, 2009." R. at 536. On July 31, 2009, B. Marian Chou, Esquire, submitted a list of 123 tenants who have agreed to be represented by her. R. at 548-551. In the Scheduling Order dated September 3, 2009, the ALJ observed that "Counsel for the Tenants' Association stated that she represents 123 of approximately 395 tenants. Therefore, there are approximately 272 tenants representing themselves in this matter." R. at 569.

⁵ The date stamp on the Final Order is May 20, 2011; however, the date typed on the signature page of the Final Order is May 23, 2011. Also, in the Order Denying Tenants' Motions for Reconsideration, the ALJ refers to the issuance date of the Final Order as May 23, 2011. R. at 931. Therefore, for the purpose of determining whether the notices of appeal were timely, we consider the date of the Final Order to be May 23, 2011.

at 859. Mr. Douglas filed a motion for reconsideration with the proper certificate of service on June 9, 2011, which was accepted by the ALJ. R. at 886. On June 9, 2011, Larry Hunter, a resident of the Dorchester House Apartments, filed a motion for reconsideration. R. at 890. On June 9, 2011, the Housing Provider filed an opposition to the Dorchester Tenants' motion for reconsideration. R. at 869. On June 16, 2011, counsel for the DTA filed the Dorchester Tenants' reply to the Landlord's opposition to the Tenants' motion for reconsideration. R. at 898. The Housing Provider filed an opposition to Mr. Douglas' motion for reconsideration on June 17, 2011. R. at 905. On June 29, 2011, the Housing Provider filed its opposition to the Dorchester Tenants' motion to submit a reply to it's opposition to the Tenants' motion for reconsideration. R. at 908.

On August 1, 2011, B. Marian Chou, Esquire, filed the Dorchester Tenants' Notice of Appeal in the Commission. Tenant Larry Hunter filed a Jurisdictional Statement of Appeal Rights on August 1, 2011. On August 2, 2011, Rudolph Douglas, Vice President of the DTA, filed a Supplemental Motion of Appeal. On August 4, 2011, Mr. Douglas filed, on behalf of the DTA, an Amendment to the Supplemental Motion of Appeal, adding a Certificate of Service. The ALJ issued an Order Denying the Tenants' Motions for Reconsideration on August 16, 2011.⁶ R. at 909-931. The Housing Provider filed a Motion to Dismiss the Appeal of Rudolph Douglas on August 24, 2011. On August 30, 2011, Eleanor Johnson, President of the DTA, filed the Dorchester Tenants' Notice of Appeal. The Housing Provider filed a Motion to Dismiss the

⁶ The ALJ found that Tenant Hunter's motion was filed two days late and deemed it to be a motion for relief from final order as provided in OAH Rules 2828.7 and 2828.9 (2011). R. at 930, n. 2.

Appeal of Eleanor Johnson on September 21, 2011. On October 5, 2011, Eleanor Johnson filed an Opposition to Motion to Dismiss the Appeal.⁷

On September 6, 2013, the Commission issued an Order on Motions to Dismiss Appeals⁸ (Commission's Order) in which the appeal filed by Marian Chou, Esquire on behalf of the Dorchester Tenants' Association (DTA) on August 1, 2011, was determined to be timely. In the Commission's Order, the appeal filed by Rudolf Douglas, Vice President of the DTA on August 2, 2011, was determined to be timely. However, the Commission made clear that the appeal only pertained to Mr. Douglas in his individual capacity. The Commission's Order determined that the appeal filed by Larry Hunter pro se on August 1, 2011, was untimely and was dismissed. Finally, the Commission determined that the appeal filed by Eleanor Johnson, President of the DTA, on August 24, 2013, was untimely and was dismissed. On November 20, 2013, a hearing was held in the Commission on the Housing Provider's appeal of the ALJ's award of Attorney's Fees to Ms. Chou.⁹

II. THE COMMISSION'S ORDER

Pursuant to the Commission's rules, a person, not a party to an appeal, may file a motion to intervene in a proceeding pending before the Commission if that person has a substantial interest in the proceeding. The Commission's rules on intervention, 14 DCMR § 3810 (2004),

⁷ On September 13, 2011, B. Marian Chou, Esq., attorney for the DTA, filed a Motion for Attorney's Fees. The Housing Provider opposed the motion on September 28, 2011. On April 12, 2012, the ALJ issued an order awarding Tenants/Petitioners \$76,560.80 in attorney's fees. On April 24, 2012, the Housing Provider filed a notice of appeal in the Commission, challenging the Attorney's fee award. The notice of appeal was timely.

⁸ On September 18, 2013, the Order was reissued for the sole clerical purpose of reflecting the address change for B. Marian Chou, Esq. The Commission issued the Second Re-Issued Order on Motions to Dismiss Appeals to explain that the Original Order and the First Re-Issued Order did not authorize Mr. Douglas to act in a representative capacity for any other tenants in the Housing Accommodation.

⁹ See supra p. 1, n. 2.

provide as follows:

Any person not a party to an appeal, but having a substantial interest in a case pending before the Commission, may file in writing a motion for leave to intervene.

14 DCMR § 3810.1 (2004).

Motions shall describe in detail the position and interest of the moving party and the grounds of the proposed intervention.

14 DCMR § 3810.2 (2004).

Any party may file an opposition to the motion.

14 DCMR § 3810.3 (2004).

The Commission may grant or deny the motion, or attach conditions to the participation of the moving party, if granted.

14 DCMR § 3810.4 (2004).

Under the Commission's rules, therefore, Mr. Brookens must demonstrate that, although he is not a party to the appeal, he has a "substantial interest in this case pending before the Commission under 14 DCMR § 3810.1. Based upon its review of Mr. Brookens' Motion to Intervene, the Commission is not persuaded for the following reasons that he has demonstrated the requisite "substantial interest" for intervention under 14 DCMR § 3810.1

First, Mr. Brookens has not established to the satisfaction of the Commission that he retains legal status as a "tenant" under the Act at the Housing Accommodation sufficient to constitute a "substantial interest" in the outcome of this appeal. For example, without opposition, counsel for the Housing Provider maintained at the Commission hearing, that Mr. Brookens has not resided in the Housing Accommodation for several years. See Dorchester

House Assocs., L.L.C v. Tenants of 2480 16th St., NW, RH-SF-09-20,098 (RHC Nov. 20, 2013).
(Hearing CD).

Second, in his Motion to Intervene, not only did Mr. Brookens not demonstrate any recent status as a tenant, he also failed to show any specific legal interests or injuries arising from the outcome of this appeal, equivalent to the status or interests of current tenants at the Housing Accommodation in this appeal. In this regard, the Commission observes that Mr. Brookens did not seek permission to assure his legal status as an intervener on appeal by seeking to intervene in this case when it was pending before OAH, nor did he demonstrate either before OAH or here that he had a claim or defense which is identical to those raised in this case. Motion to Intervene at 3-5. While Mr. Brookens vaguely refers to other administrative proceedings, he does not establish that he has legal standing as a party in this case, nor has he appropriately demonstrated to the Commission that there are “exceptional circumstances” which justify his intervention at the appellate stage. See Endangered Species Act v. Salazar, 704 F.3d 972, 979-80 (D.C. Cir. 2013); Pitts v. Thornburgh, 2003 U.S. App. D.C. Lexis 12883 (D.C. Cir. 1985) (allowing “intervention at the appellate stage, where none was sought in the district court ‘only in an exceptional case for imperative reasons’.”) (citing Amalgamated Transit Union Int’l, AFL-CIO v. Donovan, 771 F.2d 1551, 1552 (D.C. Cir. 1985)).

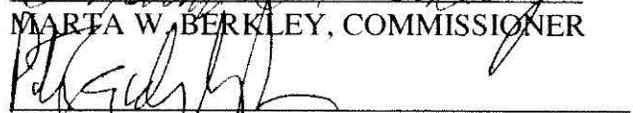
Third, in the Motion to Intervene, Mr. Brookens characterizes himself as “Tenant Representative” and “Class Representative” for “[a]ll affected Tenants” or “class of affected tenants” who apparently were litigants in prior tenant petition proceedings, see supra at p. 2). The Commission notes that Mr. Brookens has failed to demonstrate and establish his authority under applicable District of Columbia law to act in a representative capacity for “all affected

tenants” or a “class of affected tenants” in this appeal on the basis of relevant and legally sufficient evidence, satisfactory in the Commission’s discretion, as required by 14 DCMR § 3812.3 (2004) (“[A]ny person appearing before or transacting business with the Commission in a representative capacity may be required to establish authority to act in that capacity.”) In its discretion, the Commission determines that such demonstration is of particular importance with respect to Mr. Brookens’ purported representative capacity in this case in light of an original proceeding initiated by the Committee on the Unauthorized Practice of Law, later affirmed by the DCCA, see Brookens v. Committee on Unauthorized Practice of Law, 538 A.2d 1120, 1122 (D.C. App. 1988), that, because Mr. Brookens had engaged in the unauthorized practice of law in the District of Columbia, he was properly “ordered permanently enjoined and prohibited from future violations of D.C. App. R. 49.”¹⁰

For all of the reasons stated above, the Motion to Intervene is denied.

SO ORDERED.


MARTA W. BERKLEY, COMMISSIONER


PETER B. SZEGEDY-MASZAK, CHAIRMAN

JUDICIAL REVIEW

Pursuant to D.C. OFFICIAL CODE § 42-3502.19 (2001), “[a]ny person aggrieved by a decision of the Rental Housing Commission ... may seek judicial review of the decision ... by filing a petition for review in the District of Columbia Court of Appeals.” Petitions for review of the Commission’s decisions are filed in the District of Columbia Court of Appeals and are

¹⁰ D.C. App. R 49 (applicable in Brookens, 538 A.2d at 1122) defined, and governed the proceedings relating to, the Unauthorized Practice of Law. D.C. App. R. 49 (as amended) currently continues to govern the Unauthorized Practice of Law. The proceedings initiated by the Committee on the Unauthorized Practice of Law at issue in Brookens, 538 A.2d at 1121-22, are currently authorized by D.C. App. R. 49(e). See also supra at p.1, n.1.

governed by Title III of the Rules of the District of Columbia Court of Appeals. The court may be contacted at the following address and telephone number:

D.C. Court of Appeals
Office of the Clerk
Historic Courthouse
430 E Street, N.W.
Washington, D.C. 20001
(202) 879-2700

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ORDER ON MOTION TO INTERVENE BY BENOIT BROOKENS** in **RH-SF-09-20,098** was mailed, postage prepaid, by first class U.S. mail on this **11th day** of December, **2013** to:

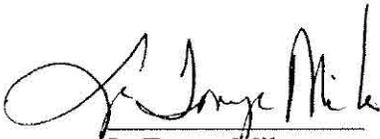
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